Supreme Court, U.S.
FILED

No. 091347 MAY 3 - 2010

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IN THE
SUPREME COURT OF THE UNITED STATES

Vera C. Harper on her Own Behalf and as Personal Representative of the Estate of her Husband, Wilson Clark Harper, Deceased,

Petitioner,

vs.

United Services Automobile Association, et. al.

Respondents.

On Petition for Writ of Certiorari to
The Florida Supreme Court

PETITION FOR WRIT OF CERTIORARI

Vera C. Harper (pro se)
5512 Old Mill Rd.
Alexandria, VA 22309
(703) 799-4095

I. QUESTION PRESENTED FOR REVIEW

Was Petitioner, both in her own capacity and as personal representative of her deceased husband's estate, deprived of due process under the U.S. laws and constitution and under Florida's laws and constitution, and did Florida's Supreme Court err, when the Florida Supreme Court, (citing Harvard *v. Singletary*, 733 *So. 2d 1020* (Fla. 1999) as its authority for doing so) refused to hear Petitioner's petition for writ of prohibition (which was filed in the Florida Supreme Court pursuant to the Florida Supreme Court's original jurisdiction to hear such petitions), and, instead, transferred the petition to Florida's Fifth District Court of Appeals which summarily denied the petition without opinion?

II. INTERESTED PARTIES

Petitioner Vera C. Harper files this petition on her behalf and as personal representative of the estate of her husband, Wilson Clark Harper, Deceased. Mrs. Harper is a resident of Virginia.

Respondent United Services Automobile Association, a/k/a USAA is a Texas reciprocal inter-insurance exchange.

Judge Clayton Simmons is a circuit court judge in Seminole County, Sanford, Florida.

Judge Robert Wohn, Jr. is circuit court judge in Brevard County, Viera, Florida.

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III. OPINIONS BELOW

Petitioner seeks review of the following orders: 1) Order of the Florida Supreme Court (at Appendix 1), entered on December 11, 2009, which transferred Petitioner's petition for writ of prohibition to Florida's Fifth District Court of Appeals; 2) Order of the Florida Supreme Court (at Appendix 3), entered February 2, 2010, denying Petitioner's motion for rehearing, and 3) Order of Florida's Fifth District Court of Appeal (at Appendix 4) denying the transferred petition for writ of prohibition.

IV. JURISDICTION

The Court's jurisdiction is conferred by 28 U.S.C. Section 1254(1), Section 1257, Section 1651(a) and Section 2101.

V. CONSTITUTIONAL PROVISIONS INVOLVED

U. S. Const. Art III, section 2:

The judicial power shall extend to all Cases, in Law and Equity, arising under the Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; to all Cases affecting Ambassadors, other public Ministers and Consuls; to all Cases of admiralty and maritime

Jurisdiction; to Controversies to which the United States shall be a Party; to Controversies between two or more States; between a State and the Citizens of another State; between Citizens of different States; between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects. In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the Supreme Court Shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and fact, with such Exceptions, and under such Regulations as the Congress shall make.

U. S. Const. Amendment XIV, section 1:

All Persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens and of the State wherein they reside. No *State shall make or enforce any law which abridge* the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Florida Const. Article V, Section 3(b) (7):

The Supreme Court...[m]ay issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction.

VI. STATEMENT OF THE CASE

The underlying civil action arose as a result of a denial of coverage for a sewer backup claim brought under a sewer backup endorsement to a homeowners insurance policy issued in Florida by Respondent USAA to Petitioner Vera C. Harper, a Virginia resident, and her (now deceased) husband, Wilson C. Harper, a Florida resident.

On February 18, 2005, Mr. and Mrs. Harper, who were both 85, filed their complaint, *pro se*, in Seminole County Circuit Court (Case No. 05-CA-401-15-W) seeking a fair resolution of their unpaid insurance claim. However, instead of having impartial judges assigned to the case, Petitioner later learned that judges who were USAA members had been assigned to her case, or assigned themselves to the case, or assigned other judges to the case.

By keeping the case in the hands of its "member judges" and/or their designees, Respondent USAA has been able to control the case, and Petitioner has been placed in the untenable position of either having to accept a biased judge to preside in her case or having to go through the process of disqualifying the

member judges or their designees, thereby further delaying her case and increasing her legal expenses.

When Petitioner attempted, through numerous *petitions for writ of prohibition, certiorari and/or* mandamus filed with the Florida Supreme Court and/or Florida's Fifth District Court of Appeal, to seek review of the actions by the member judges and their designees below, her petitions were denied.

Because neither Florida's Fifth District Court of Appeal nor the Florida Supreme Court took any action on the extraordinary writs filed by petitioner, the lower court judges, who Petitioner had previously disqualified, were allowed to do what they wanted, including file bar grievances against Petitioner's Florida Counsel in an effort to deprive Petitioner of legal representation and force her to abandon her claim.

VII. STATEMENT OF FACTS

The issues before this Court relate to the actions of two Florida Circuit Court judges, Judge Clayton *Simmons and Judge Robert Wohn, Jr. as well as to* the action (or lack thereof) of the Florida Supreme Court and Florida's Fifth District Court of Appeal when Petitioner filed a petition for writ of prohibition in the Florida Supreme Court asking that it review the actions taken by Judge Simmons in assigning himself to the case and his subsequent assignment of

the case to Judge Wohn, a judge in another county.

When the underlying Florida case was first filed in February 2005, it was assigned to Judge Simmons. Approximately a year and a half later, another circuit court judge, Judge Alan Dickey, was assigned to the case. A year after that, Judge Simmons was assigned as the Chief Judge of the judicial circuit.

In June 2008, Petitioner moved to disqualify Judge Dickey on the grounds that she feared she would not receive a fair trial because of prejudice on the part of the judge against Petitioner and in favor of the opposing party. After Judge Dickey was disqualified, Judge Simmons, as Chief Judge, appointed Circuit Court Judge Nancy Alley as successor judge on or about July 24, 2008.

Immediately thereafter, Petitioner moved to disqualify Judge Alley on the grounds that she and Judge Dickey worked together in the same division. When Judge Alley denied the motion to disqualify, Petitioner filed a petition for writ of prohibition in Florida's Fifth District Court of Appeal. When Petitioner's Florida counsel advised Judge Alley that a petition for writ of prohibition had been filed against her, she disclosed for the first time that she had a financial interest in Defendant USAA's reciprocal inter-insurance exchange as a member.

However, despite her financial interest in Defendant's company, Judge Alley continued to act in

the case. Moreover, Petitioner's initial petition for writ of prohibition and subsequent petitions for extraordinary writ filed with Florida's Fifth District Court of Appeal were all denied without opinion.

Although Judge Alley ultimately recused herself from the case, she did not do so until January 2009 and, immediately thereafter, filed a bar grievance against Petitioner's Florida Counsel, as her predecessor, Judge Dickey, had done after he was disqualified.

After Judge Alley's recusal, Judge Simmons appointed Circuit Court Judge James Perry as successor judge. However, after presiding in the case for less than two months, Judge Perry was appointed to the Florida Supreme Court.

Sometime between March 4, 2009 and June 23, 2009, Judge Simmons assigned himself as successor trial judge. When a hearing before Judge Simmons was set for June 23, 2009, Petitioner's Florida counsel objected to Judge Simmons presiding at the hearing on the grounds that Florida's Rules of Judicial Administration (Rule 2.215) did not authorize the chief judge to assign the case to himself.

At the (first) hearing held on June 23, 2009 before Judge Simmons on Defendant's motion for clarification of procedure regarding scheduling of hearing, Petitioner's Florida counsel objected to Judge Simmons appointing himself to the case, on the

grounds that the applicable Judicial Administration Rule (Rule 2.215) did not provide authority for the Chief Judge to assign himself to a case when a previous judge is disqualified.

When Judge Simmons ruled that he did have such authority, Petitioner's Florida counsel asked Judge Simmons if he was a member of Defendant USAA's *reciprocal inter-insurance exchange*. Although Judge Simmons had never previously disclosed his membership in Defendant USAA's reciprocal in response to Petitioner's Florida counsel's question, Judge Simmons disclosed for the first time that he was a USAA member and had been one for 35 years.

When Petitioner's Florida counsel advised Judge Simmons that as a member of USAA's reciprocal inter-insurance exchange, and under Florida Statute Sections 38.01 and 38.02, Judge Simmons not only had a financial interest in the Defendant's reciprocal , but was also a party to the action, the judge agreed to recuse himself from the case.

However, after Judge Simmons recused himself from the case and despite his acknowledged membership and financial interest in Respondent's reciprocal inter-insurance exchange, he continued to act in the case and assigned the case to Brevard County Circuit Court Judge Wohn.

When Petitioner filed a petition for writ of prohibition in the Florida Supreme Court under the

Court's original jurisdiction seeking review of Judge Simmons actions, the Florida Supreme Court refused to consider the matter, citing Harvard v. Singletary, 733 So. 2d 1020 (Fla. 1999), and, on December 11, 2009, transferred the case to Florida's Fifth District Court of Appeal (See December 11, 2009 Order at App. 1). Thereafter, Petitioner timely filed a motion for rehearing with the Florida Supreme Court which was denied on February 2, 2010 (See February 2, 2010 Order at App. 3). The Fifth District Court of Appeals denied the transferred petition on December 16, 2009 (see Order at App.4) as it had done with the four previous petitions for writ of prohibition and two previous petitions for writ of certiorari Petitioner had previously filed with the Fifth District Court of Appeal.

VIII. REASON FOR GRANTING THE PETITION

In the opinion of Petitioner, the Florida Supreme Court misapplied Harvard v. Singletary, 733 So. 2d 1020 (Fla. 1999) in Case No. SC09-1835, and in doing so, not only abdicated its constitutional role to a lesser court, but also deprived petitioner and her husband's estate of due process and other protections under the Florida and United States Constitutions.

Relying on the Harvard case, The Florida Supreme Court transferred Petitioner's petition for writ of prohibition to Florida's Fifth District Court of Appeal which denied it five days later, without opinion. However, for the reasons stated below, Harvard did

not apply to the petition for prohibition filed by Petitioner in the Florida Supreme Court.

The Florida Supreme Court's decision in Harvard v. Singletary arose in a criminal case in the context of the Florida Supreme Court's review of a petition for writ of habeas corpus (and not in the context of a petition for writ of prohibition, like Petitioner's, which was filed in a civil case). .

Noting that the overwhelming majority of the petitions for extraordinary relief received by the Florida Supreme Court in the previous year were filed by prisoners seeking to invoke this Court's original writ jurisdiction pursuant to Article V, sections 3(b)(7), (8) and (9) of the Florida Constitution, the Florida Supreme Court found in Harvard that, as was true of many of such petitions, a review of the petition for writ of habeas corpus before it could require fact-finding, a task it found it was ill-equipped to handle. Based on its determination that the circuit court was in the best position to resolve such fact-finding problems, the Florida Supreme Court declined to exercise its original jurisdiction.

However, not only was the petition for writ of prohibition filed by Mrs. Harper in the Florida Supreme Court in Case No. SC09-1835 not one of the many petitions for extraordinary relief filed by prisoners, but no fact-finding was required for the Florida Supreme Court to decide Mrs. Harper's petition.

Furthermore, even if there was a need for fact finding, as was found in Harvard, Florida's Fifth District Court of Appeals was no better equipped, than the Supreme Court itself, to handle fact finding, if it was required.

Finally, Petitioner submits that her petition for writ of prohibition filed in the Florida Supreme Court in Case No. SC09-1835 clearly raised serious legal issues which required the Florida Supreme Court's specific and immediate attention, including, but not limited to, whether a trial judge, who is also the chief judge can preside in the case without disclosing that he is a member of respondent's reciprocal inter-insurance exchange; or assign himself to the case when he is both a party thereto and has a financial interest therein without disclosing such an interest; or rule in ways that favor the respondent in the case while at all times failing to disclose that he has a financial interest in respondent's company; or whether a chief judge who has failed to disclose his financial interest in respondent's reciprocal inter-insurance exchange can appoint another judge who is also a member of respondent's reciprocal inter-insurance exchange (and who also initially failed to disclose her affiliation as a member of respondent's reciprocal inter-insurance exchange); or whether a chief judge who ultimately discloses his financial interest in respondent's reciprocal inter-insurance exchange, and immediately thereafter recuses himself from the case, can continue to act in the case and attempt to assign the case to other judges who either

also have a financial interest in respondent's reciprocal inter-insurance exchange or are recruited from another county to act as successor judge in the case; or whether a judge recruited from another county to act as successor judge in the case has jurisdiction to act in the case when the chief judge who recruited him, had previously recused himself from the case, and/or had a financial interest therein and/or was a party thereto. Or whether such actions by a financially interested judge violate Canon 3E of Florida's Code of Judicial conduct.

Petitioner submits that the Florida Supreme Court decision has far departed from the accepted and usual course of judicial proceedings, and has sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power. Petitioner request oral argument.

IX. CONCLUSION

For the reasons stated herein, Petitioner requests that this Court find error by the Florida Supreme Court below and grant her petition.

Dated May 3, 2010

Respectfully submitted,

Vera C. Harper, on her behalf
and as personal representative
of the Estate of Wilson Clark
Harper, Deceased (petitioner, pro se)
5512 Old Mill Rd.
Alexandria, VA 22309
(703) 799-4095

App. 1

SUPREME COURT OF FLORIDA

FRIDAY, DECEMBER 11, 2009

Case No. SC09-1835
Lower Tribunal No(s): 05-CA-401-15-G

VERA C. HARPER, vs. UNITED SERVICES ETC. AUTOMOBILE ASSOCIATION

Petitioner(s) Respondent(s)

The petition for writ of prohibition is hereby transferred, pursuant to Harvard v. Singletary, 733 So. 2d 1020 (Fla. 1990), to the Fifth District Court of Appeal. The transfer of this case should not be construed as an *adjudication or comment on the merits of the* petition, nor as a determination that the transferee court has jurisdiction or that the petition has been properly denominated as a petition for writ of prohibition. The transferee court should not interpret the transfer of this case as an indication that it must reach the merits of the petition. The transferee court shall treat the petition as if it had been originally filed there on the date it was filed in this Court. Any determination concerning whether a filing fee shall be applicable in this case shall be made by the transferee court.

Any future pleadings filed regarding this case should be filed in the above mentioned district court at 300 South Beach Street, Daytona Beach, Florida 32114.

A True Copy
Test:

_____/S/_____ (SEAL)
Thomas D. Hall
Clerk, Supreme Court

bm
Served:
HON. SUSAN WRIGHT, CLERK
DAVID ANTHONY HARPER
JANICE CAROLE BUCHMAN
CHRISTOPHER M. RAMEY
JOHN JOSEPH PAPPAS
HON. MARYANNE MORSE, CLERK

SUPREME COURT OF FLORIDA

TUESDAY, FEBRUARY 2, 2010
Case No. SC09-1835
Lower Tribunal No(s): 05-CA-401-15-G

VERA C. HARPER, ETC. vs. UNITED SERVICES AUTOMOBILE ASSOCIATION

Petitioner(s) Respondent(s)

Petitioner's Motion for Rehearing is hereby denied.

A True Copy
Test:

_____/S/_____ (SEAL)
Thomas D. Hall
Clerk, Supreme Court

bm
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IN THE DISTRICT COURT OF APPEAL OF
THESTATE OF FLORIDA
FIFTH DISTRICT

VERA C. HARPER, ETC.

Petitioner,

v. CASE NO. 5D09-4423

UNITED SERVICES AUTO-
MOBILE ASSOCIATION, ETC.

Respondent.
_____/

DATE: December 16, 2009

BY ORDER OF THE COURT:

ORDERED that the Petition for Writ of Prohibition, transferred to this Court on December 11, 2009, is denied on the merits.

I hereby certify that the foregoing is (a true copy of) the original Court order.

SUSAN WRIGHT, CLERK

BY _____/S/_____ (SEAL)
Deputy Clerk

cc. Hon. Robert Wohn, Jr.
David A. Harper, Esq.
John J. Pappas, Esq. and Janice C. Buchman, Esq.